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RESEARCH ARTICLE

Jurisdictional Conflicts and its Relation to Conflict of Laws in Private International Law: An Afghan Legal Perspective

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ABSTRACT

Conflicts of court are one of the significant discourses of Private international law. When a legal case between private individuals involves a foreign element and is addressed within a country's judicial system, a key question arises: which country's court has jurisdiction over the case? This issue is known as a jurisdictional conflict**.** Resolving such conflicts is significant in private international law. This is significant for Afghanistan's judicial and legal institutions, and foreign nationals engaging with the Afghan legal system to understand the jurisdictional framework for addressing cross-border legal disputes effectively. This research discussed the jurisdictional conflict from the perspective of the Afghan legal system and its relations with conflicts of laws. This research analyzes the rules governing jurisdictional conflicts within Afghanistan's legal system. This is a Review article, utilizing Afghanistan's various laws and credible legal sources to understand how Afghan courts handle cases with international elements. The findings indicate that Afghan courts have jurisdiction over cases with international aspects. However, certain conditions must be met for foreign nationals, such as residency requirements **or** the presence of assets within Afghanistan. These conditions determine the extent to which Afghan courts can adjudicate disputes involving non-citizens.

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Introduction

Human beings have always needed to interact with others to live in society. Unlike ancient people, whose needs were limited to their villages and communities, modern individuals have expanded their sphere of activities globally. As people strive to fulfil their needs and secure their interests, conflicts can arise when the rights of others are not considered. To regulate such interactions, national and international private laws have been established to ensure domestic and global legal order. While national legal frameworks ensure justice within a country's borders, challenges emerge in cases involving international elements. When a legal dispute has cross-border implications, determining the competent court becomes a complex issue. To address such jurisdictional conflicts, different countries have established legal mechanisms to resolve them under private international law. This research focuses on Afghanistan's legal system and its approach to resolving jurisdictional conflicts. It aims to clarify the resolution of jurisdictional conflicts in accordance with the Afghan legal system, especially the authority of Afghan courts to handle international cases within Afghanistan's laws, the relationship between jurisdictional conflicts and conflict of law. This study is particularly valuable for judges, lawyers, and policymakers**,** helping them navigate jurisdictional conflicts more effectively. It also provides crucial insights for foreign investors, business professionals, and students**,** enabling them to understand their legal standing in Afghanistan. Recognizing the territory of court jurisdiction is vital for protecting individual rights and resolving disputes efficiently**,** especially in today's interconnected world with increasing cross-border legal interactions. This article answers the

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following questions: How are jurisdictional conflicts resolved under the Afghan legal system? To what extent do Afghan courts have the authority to handle international cases within Afghanistan's legal framework? And what is the relationship between jurisdictional conflicts and conflict of law?

Materials and Methods

This research employs a qualitative, doctrinal methodology to examine Afghanistan's legal framework for resolving jurisdictional conflicts in the field of private international law. It is grounded in the analysis and interpretation of legal texts and relies on secondary sources, including books, national legislation, academic literature, and relevant international legal instruments. The study aims to offer a clear and comprehensive understanding of Afghanistan's rules governing jurisdiction in cases with international elements.

Jurisdictional Conflict

When a dispute arises between individuals at the national level, there is no issue because national laws exist, and these disputes are resolved within the framework of national courts. However, when a dispute arises at the international level between private individuals, as there is a conflict between laws. In such cases, a conflict of jurisdiction also arises, it means that conflict of jurisdiction arises when there is a foreign element in the case. And there is no unified rule regarding the application and effects of individuals' rights among countries (Nasiri, 2013, p. 141). And it is essential to resolve the conflict of jurisdiction before addressing the conflict of laws. In other words, "before a court decides which country's law should apply to a particular issue, it must first determine whether the court itself has jurisdiction to hear the case or any other country's court has" (Nasih, 2013, p. 119).

For example, if an Arab woman and her husband want to end their marriage by divorce in Afghanistan, the Afghan judge must first determine which court is competent to hear the case. Here, there is a conflict between the laws of Afghanistan and Saudi Arabia. However, before determining the applicable law, the judge must first decide whether the Afghan court or a Saudi court has jurisdiction over the divorce issue between the Arab woman and her husband.

In another example, if a dispute arises in Afghanistan concerning a contract between an Afghan national and a foreigner, the question is whether the Afghan courts have jurisdiction or a foreign court.

In the above examples, the cases involve a foreign element, and there are no same rules and regulations among these states.

But when the courts declare their jurisdiction over the case, it is not necessarily required to apply their own law (Nasiri, 2013, p. 119). For example, in Afghanistan, the laws of the foreigner's country apply to personal status matters such as marriage, divorce, capacity, etc., unless they contradict public order or good morals (civil code, 1977, a. 17).

Before discussing the jurisdiction conflicts from the perspective of the Afghan legal system, it is important to discuss the Benefits of determining the Jurisdiction of Courts in International Law first.

Benefits of Determining the Jurisdiction of Courts in International Law:

As the determination of jurisdiction has importance in domestic law, it also has significance in international law for many reasons, such as the parties to a dispute must know which court to approach for resolving the conflict, so that they do not waste time by referring to multiple courts. This helps avoid unnecessary expenses; moreover, a judge must be aware of the limits of their jurisdiction, particularly in international cases. They must understand whether they have jurisdiction over the case or not. The determination of jurisdiction not only considers the convenience of the parties but also the judge's ability to access the documents, evidence, and subject matter of the case (Beheshed, 1997, p. 17)., in addition "lex fori" is the important doctrine of the conflicts of law, which mean that procedure in each case is governed by the law of the court invoked (Ailes, 1941). The determination of international jurisdiction also entails the application of the rules of procedure of the respective country's courts. Thus, if a court in any country is deemed competent to hear a case, the rules of procedure of that country's courts will apply. As well, the jurisdiction of courts also plays a significant role in the enforcement of judgments. Each country enforces the final judgments of its courts without condition, whereas the enforcement of foreign judgments may depend on certain conditions, such as reciprocal recognition or execution orders from domestic judges.

Resolving jurisdictional conflicts

Afghanistan's Civil Code, the Law of Civil Procedure, and the law on the structure and competencies of courts contain provisions regarding resolving conflicts of jurisdiction. Although these provisions primarily address jurisdiction at the national level, they are also applicable in the field of international private law.

According to Article 3 of the law on the structure and competencies of courts in Afghanistan, all individuals and legal persons may file a lawsuit in court as either complainants or defendants. This article states:

"The jurisdiction of the judiciary includes all disputes that are filed in court in accordance with the law, including those involving individuals or legal persons, in the role of complainant or defendant" (The law on the structure and competencies of courts, 2005, a. 3).

The term "persons" in this article applies to both nationals and foreigners, meaning the provision is general. Similarly, Articles 95 and 96 of the Law of Civil Procedure grant Afghan courts the jurisdiction to hear cases where one or both parties are foreigners.

The Law of Civil Procedure states: "The jurisdiction of Afghan courts applies to civil disputes involving foreign nationals residing in Afghanistan" (Civil Procedure Law, 1990, a. 95).

As seen, Afghan courts have jurisdiction over both nationals and foreign nationals. The rules that grant this jurisdiction are also applicable in the context of international private law. For instance, under the internal regulations of Afghanistan, disputes related to immovable property fall under the jurisdiction of the court where the property is located. This principle is also applicable within the field of international private law according to the Civil Code.

The Civil Code states: "with respect to the ownership of possession and other real rights, the law of the place wherein the real estate is located shall apply, and with regard to movables the law of the place wherein the movables were present at the time of occurrence of events resulting in acquisition or loss of the rights shall apply" (Civil Code, 1977, a. 26).

Types of Cases Involving Foreign Elements in Afghanistan

According to the provisions of the laws of Afghanistan, two types of cases involving international private law can be envisioned. First, a lawsuit filed by a foreign national against an Afghan national in Afghan courts, and second, a lawsuit filed by an Afghan national against a foreign national in Afghan courts (Abdullah, 2013, p. 112).

lawsuit filed by a foreign national against an Afghan national: When a foreign national files a lawsuit against an Afghan national in Afghan courts, both the subject matter and territorial jurisdiction must be seriously considered. Each of these types of jurisdictions is explained as follows:

Subject Matter Jurisdiction: Subject matter jurisdiction refers to the authority of a court to hear and decide only those cases that fall within the scope for which that court was established (Civil case studies guide in Afghanistan with human rights commentary, 2013, p. 63). For example, if a case falls under personal status matters, and a court has jurisdiction over personal status issues, other courts do not have the authority to hear that case.

According to Article 48, district courts generally have jurisdiction over civil and personal status matters, except for those cases handled by the departments of rights (The law on the structure and competencies of court, 2005). The law specifies that, "a petition submitted to the department of rights, if the defendant or both parties are dissatisfied, shall be referred to the court" (Civil Procedure Law, 1990, a. 48). This means that if a case is not resolved through the department of rights, it will be referred to the relevant court with subject matter jurisdiction.

Territorial Jurisdiction: Territorial jurisdiction refers to the geographic area in which a court has authority. This means that a court can only hear cases from the administrative unit where it is located, such as a city, district, province, or other administrative unit. A court has jurisdiction only over disputes that arise within the territorial boundaries of its respective administrative unit (Civil case studies guide in Afghanistan with human rights commentary, 2013, p. 62).

In matters of jurisdiction, the court of domicile of the defendant has jurisdiction. If the defendant resides in multiple places, the court in the place where the defendant is present at the time of the lawsuit has jurisdiction. Likewise, in the case of the spouse's absence or disappearance, the court in the complainant's place of residence holds jurisdiction. Additionally, according to the Civil Procedure law, in cases where a person has left Afghanistan without legal authorization, the court in the complainant's place of residence will have jurisdiction (Civil Procedure Law, 1990, a. 81).

The court of complainant's residence is competent to hear a case against a person, who has left Afghanistan without legal authorization in cases such as claims for alimony by the wife, parents, and children, claims to prove lineage, claims for the deprivation of guardianship[*walayt*] and claims to take away executorship [*wisayat*] and patronage [*qaymomiyat*] (Civil Procedure Law, 1990, a. 100).

For cases involving the married wife, the court in the husband's place of residence is competent. For claims related to a girl who has reached the legal age of marriage, the court in the guardian's [*wali*] place of residence is competent. In cases involving individuals with limited or no legal capacity, the court in the place of residence of the guardian [*wali*] or the executer [*wasiyy*] is competent. For government employees and members of the armed forces, the court in the place of their work has jurisdiction. In the case of travelers or nomads, the court to handle the case is determined by mutual agreement between both parties (Civil Procedure Law, 1990, aa. 81-87).

lawsuit filed by an Afghan national against a foreign national: For a lawsuit filed by an Afghan national against a foreign national in Afghanistan's courts, there are two possible scenarios, first, If the foreign national does not reside in Afghanistan, the Afghan national must file the case in the court where the foreign national resides. Second, If the foreign national is present in Afghanistan, the Afghan courts will have jurisdiction as per the rules of the Civil Procedure law even he/she does not have domicile in Afghanistan.

For example, according to Article 96 of the Civil Procedure law, Afghan courts will also have jurisdiction in the following cases involving foreign nationals, even if he/she does not have domicile in Afghanistan, If the foreign national has a voluntary residence in Afghanistan, if the subject matter of the contract or the place of its execution is in Afghanistan, if the case relates to a claim for estate started in Afghanistan, and if the deceased's property (waif) or part of it is in Afghanistan.

As previously mentioned, the conflict of laws cannot be resolved until the Jurisdictional conflict (conflict between courts) is settled, meaning that the competent court is determined.

For this reason, there is a deep connection between resolving Jurisdictional conflict and resolving conflict of laws, which we will discuss in two separate areas, highlighting both the connections and differences:

The Connection Between the Jurisdictional Conflicts and the Conflict of Laws

As discussed earlier, the Jurisdictional conflict arises when there is a foreign element in a case, and the question arises whether the court in the country where the case is being filed has jurisdiction. Or does any foreign court have jurisdiction?

For example, if a case arises concerning property located outside Afghanistan, it is determined whether the court in Afghanistan or the court in the country where the property is located has jurisdiction.

It was also mentioned that resolving Jurisdictional conflicts takes priority over resolving conflicts of laws. It is worth mentioning that the jurisdiction of a country's court does not necessarily mean that the laws of that country must apply to the case.

For example, in cases involving the personal status of foreigners, Afghan courts have jurisdiction, but Afghan law may not apply. However, if the matter concerns public order (Akhundzada, 2016, p. 53), in such cases, the Afghan court is obligated to apply Afghan law based on the nature of the claim.

In any case, the conflict of laws is related to the Jurisdictional conflict in the following areas:

In the area of sources: in some countries, such as France, many rules of private international law have emerged based on judicial practices. Thus, judicial practice is considered the primary source in resolving Jurisdictional conflict and conflict of laws (Almassi, 2013, p. 23).

In Afghanistan, laws are considered the primary source for resolving both types of conflicts. For example, Article 15 (Articles 16-35 of the Civil Code) deals with the resolution of conflicts of laws, while Articles 3, 96, and 95 of the Civil Procedure law deal with resolving conflicts between courts.

In terms of the study of subjects and methods of reasoning: just as the conflict of laws uses the divisions and concepts of domestic law (particularly civil law), the conflict of courts also uses this method. In many cases, the rules of court jurisdiction in domestic law are also applicable and enforceable in international cases (Akhundzada, 2016, p. 54). For example, the rule that the court in the defendant's place of residence has jurisdiction is a rule of domestic law, but it is also enforceable in international law.

In terms of structure: The basic divisions made in the conflict of laws and the theories built around resolving these conflicts also exist in the conflict of courts (Nasih, 2013, p. 123). For example, in the conflict of laws, there is a distinction between the stage of creating a right and the stage of international influence and effect. Similarly, in the conflict of courts, there is a difference between determining the competent court and the international influence and effect of judgments. For instance, if a wife and husband approach an Afghan court for a divorce, it must first be determined whether the Afghan court has jurisdiction over the case (the issue of jurisdictional conflict). However, it may be the case that the wife and husband have obtained a divorce in another foreign country and wish to enforce the judgment foreign court in Afghanistan (the issue of international influence and effect of judgments).

Another similarity is in the area of exceptions. Exceptions that arise in the conflict of laws, such as public order, fraud, and referral, are also considered in the conflict of courts (Nasih, 2013, p. 123).

Differences Between the Jurisdictional Conflict and the Conflict of Laws

In terms of the relevant rules: The difference in this area is that the rules related to the conflict of laws have two aspects. Sometimes, the law of the country where the court is located ("lex fori"), while at some times, the foreign law is considered competent. In contrast, the rules related to the conflict of courts have only one aspect, which is that these rules do not grant jurisdiction to any law other than the law of the country where the court is located ("lex fori") (Akhundzada, 2016, p. 54). For example, whenever an Afghan court is considered competent to handle an international case based on Afghan laws, the conflict of courts is directly resolved, and the case is not referred to another court.

However, it should be noted that if there are some bilateral or multilateral agreements, the courts of different countries may handle relevant cases. For instance, according to Article 24 of the agreement between the governments of Afghanistan and Turkey on international land transportation in 2005, courts of both countries are considered competent to handle transit-related issues (Nasih, 2013, p. 124).

In terms of the specific characteristics of the relevant rules: The issue of the conflict of laws generally has a legal nature because it involves the consideration of the legal rights and interests of person. On the other hand, the rules related to the Jurisdictional conflict are largely political because they involve issues of national sovereignty. Therefore, it can be said that political considerations are primarily considered in the rules related to the Jurisdictional conflict. For example, we can clearly understand the political aspect of the Jurisdictional conflict from Articles 14 and 15 of the French Civil Code:

According to Article 14**,** A foreign national, even if not residing in France, can request the execution of a contract in the French courts if it was made with a French national in France. Also, a foreign national can bring a case to French courts for the execution of a contract made with a French national outside of France, moreover according to Article 15, any French national, even if they have made a contract with a foreign national outside the country, can request the execution of that contract through French courts (Nasih, 2013, p. 124). It is evident from the above that in any case where one party is French, French courts are considered competent. This jurisdiction is based on nationality, and we understand that nationality is both a political relationship and a political concept. Furthermore, in the context of the conflict of laws, the principle of equality between foreigners and nationals is considered, whereas in the area of the conflict of courts, nationals are often given preference over foreigners.

Conclusion

In conclusion, it can be said that the conflict of courts, like the conflict of laws, forms an important aspect of private international law. However, it is even more crucial to resolve the conflict of courts first before addressing the conflict of laws. As a result of resolving the conflict of courts, a court in one country may be deemed competent, and it is not necessary for the laws of that country to apply to the case. Resolving jurisdictional conflict is beneficial for determining the obligation of parties, judges, procedural law, and for the implementation of judgments of courts. Afghan laws consider Afghan and foreign nationals, as well as disputes between foreign nationals, as falling under the jurisdiction of Afghan courts, but only in cases where foreign nationals are residing in Afghanistan in the following cases even if he/she does not have domicile in Afghanistan, If the foreign national has a voluntary residence in Afghanistan, if the subject matter of the contract or the place of its execution is in Afghanistan, if the case relates to a claim for estate started in Afghanistan, and if the deceased's property (waif) or part of it is in Afghanistan. or where the subject matter of the dispute

(property) is in Afghanistan. When a foreign national files a lawsuit against an Afghan national in Afghan courts, both the subject matter and territorial jurisdiction must be seriously considered.

Recommendations

1. Since Afghanistan's Civil Code was enacted a long time ago, and significant new issues have emerged concerning conflicts of laws and jurisdictional matters, there is a need to modernize and update the Civil Code in line with contemporary developments.
2. A strong relationship should be established between Afghanistan's judiciary and the faculties of law and political science in universities, so that university professors can assist the courts when needed in matters related to jurisdictional conflicts and conflict of law. In return, the courts should share resolved cases in this area with students to enhance their academic understanding.

Conflict of interests

The authors declare no conflicts of interest

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